No....705.....

DEC 31 194
CHARLES ELMORE CRO

Supreme Court of the United States

(OCTOBER TERM, A. D. 1945)

THE FEDERAL NATIONAL BANK, OF SHAWNEE, OKLAHOMA, a corporation, Guardian of the Estate of MINNIE O. CAMMACK, an incompetent person,
Petitioner,

VERSUS

NEW YORK LIFE INSURANCE COMPANY, a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

MARK GOODE,
American National Bank Building,
Shawnee, Oklahoma,
Counsel for Petitioner.

JOHN L. GOODE,
American National Bank Building,
Shawnee, Oklahoma,
Of Counsel.

December, 1945.

UTTERBACK TYPESETTING CO., 12 S. Walker, Oklahoma City 4, Okla.

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No.....

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PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Justices of the Supreme Court of the United States:

Comes now The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person, and respectfully petitions this Honorable Court to grant a writ of certiorari to review the opinion and decree of the United States Circuit Court of Appeals for the Tenth Circuit, rendered and entered on the 29th day of October, 1945, in the case lately pending in said United States Circuit Court of Appeals for

the Tenth Circuit, styled New York Life Insurance Company, a corporation, Appellant, v. The Federal National Bank of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person, Appellee, being No. 3147 of causes on the docket of said United States Circuit Court of Appeals for the Tenth Circuit, reversing the decree of the United States District Court for the Western District of Oklahoma in said cause in favor of the petitioner and against respondent herein; which said decree of the United States Circuit Court of Appeals for the Tenth Circuit became final on the 6th day of December, 1945, by the denying by that Court of petitioner's petition for a rehearing.

OPINIONS IN THE COURTS BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit in said cause of New York Life Insurance Company, a corporation (defendant-appellant) v. The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person (plaintiff-appellee), which petitioner here seeks to have reviewed, is not yet officially reported, but appears on pages 229 to 236 of the transcript of the printed record filed herewith.

The opinion of the district court is reported in 57 Fed. Supp. at page 924, and is found on pages 33 to 51 of the transcript of record filed herein.

SUMMARY STATEMENT OF THE MATTER INVOLVED

In 1928 respondent, New York Life Insurance Company, a corporation, issued and delivered to Allen J. Cammack, at Shawnee, Oklahoma, a policy of insurance upon his life in the sum of $10,000.00. Minnie O. Cammack, wife of insured, was named in the policy as revocable beneficiary. The policy was an Oklahoma contract, having been applied for and delivered at Shawnee, Oklahoma, where Cammack and his wife resided.

In July, 1940, one Benjamin Franklin Fields, a convict on parole from the Federal Penitentiary (R. 92-93), claiming to be the owner of the policy by virtue of a written assignment purporting to have been executed and acknowledged by Allen J. Cammack, at Shawnee, Oklahoma, on July 11, 1940 (R. 213), applied to the Company for a policy loan and received from the Company thereon the sum of $7,769.00.

Allen J. Cammack died January 25, 1941, and for several years prior to his death had been continuously and hopelessly insane. On July 11, 1940, he was wholly without understanding of the nature and consequences of his acts (R. 27-28). After his death Fields obtained from the Company the balance of the policy, in the amount of $1,198.17 (R. 185).

June 6, 1941, Minnie O. Cammack was adjudged to be mentally incompetent and The Federal National Bank, of Shawnee, was appointed her guardian; the Court finding that the allegations of the petition for the appointment of

a guardian, which alleged that Minnie O. Cammack was mentally incompetent and did not have sufficient mental capacity to understand in a reasonable manner the nature and effects of her acts, were true and correct (R. 191-192-195). On appeal to the District Court of Pottawatomie County, Oklahoma, the adjudication and appointment were affirmed.

Neither of the Cammacks, or their estates, ever received anything of value, directly or indirectly, on account of the assignment (R. 29). On the date of the purported assignment the Cammacks were living by themselves in their home at Shawnee and had no living parents, brothers, sisters, children or grandchildren. At this time Allen J. Cammack was aged 74 and his wife, Minnie O. Cammack, aged 75 (R. 28).

Upon the affirmance by the district court of the adjudication of incompetency, the Guardian, The Federal National Bank, petitioner herein, commenced this action in the District Court of Pottawatomie County, Oklahoma, to recover the proceeds of the policy for Minnie O. Cammack, its ward. The action was removed to the United States District Court for the Western District of Oklahoma solely upon the ground of diversity of citizenship (R. 1-3).

The defenses pleaded by the Company were a denial of the lack of mental capacity on the part of the insured and beneficiary, estoppel and laches (R. 912). The trial court, after citing Section 22, Title 15, O. S. A. 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

and the decisions of the Oklahoma Supreme Court construing said statute in the cases of *Connecticut General Life Ins. Co.* v. *Cochran et al.*, 95 Okla. 111, 218 Pac. 313; *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422; *Dozier* v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063, held that the pretended assignment to Fields was utterly void, saying:

> "Thus, it has been definitely settled in the State of Oklahoma that such a contract is utterly void, conveys no rights to either the grantee or subsequent parties who act on it even in good faith. In other words, such a contract is of no force or effect than a forged instrument and transfers no greater rights."

and rendered judgment for petitioner (R. 36).

On appeal the United States Circuit Court of Appeals reversed the judgment rendered by the trial court in favor of petitioner, holding that payment to Fields, the assignee named in an assignment (which was utterly void under Oklahoma law) discharged the policy contract. The Circuit Court took no notiice, in its opiniion, of any of the Oklahoma statutes or decisions and did not apply the Oklahoma law as the rule of decision in the case as required by Sec. 34 of the Federal Judiciary Act of September 24, 1789 (1 Stat. at L. 73, 92), chap. 20, 28 USCA, sec. 725.

The United States Circuit Court of Appeals erroneously treated the question of whether payment to Fields, the purported assignee of the insane insured, discharged the policy contract as one of general law and applied thereto what it conceived to be the weight of authority in cases

from other jurisdictions dealing with the payment by banks of the checks of insane depositors and with the payment by insurance companies of the proceeds of insurance policies to new beneficiaries designated by insane insureds, which cases the Circuit Court deemed to be analogous in principle. Under the authority of these cases, the principal of which were *Metropolitan Life Ins. Co.* v. *Bramlett*, 140 So. 752 (Ala.); *Reed* v. *Mattapan Deposit & Trust Co.* (Mass.) 84 N. E. 469, and *Poole* v. *Newark Trust Co.* (Del.) 8 Atl. (2d) 10, the Circuit Court of Appeals held that in paying the proceeds of the policy to Fields, the assignee, the Insurance Company was not dealing with a new contract but was merely performing the original policy contract made at a time when the assured was of sound mind. In so doing the Circuit Court of Appeals overlooked the fact that the cases relied on to support this reasoning all arose in jurisdictions where the particular act of an insane person being considered was only voidable and not void under local law, while in Oklahoma it has been specifically held that a change of beneficiary by an insane insured is a void contract and not a voidable act. See: *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422.

As a second ground for holding that payment to Fields discharged the policy contract the Circuit Court held that the provision in the policy, reading, "the Company assumes no responsibility for the validity of any assignment," operated to relieve the Company from all liability for pay-

ing the proceeds of the policy out on invalid assignments where payment was made without notice of the invalidity, the Court saying:

> "There is no ambiguity or uncertainty as to the meaning of this provision. It can only mean that the Company shall not become liable by virtue of the assignment which for any reason was invalid" (R. 235).

The interpretation or effect of this provision of the policy had not been raised by the parties either in the pleadings, briefs or arguments and this particular defense to the action was not an issue in the case but was established by the Circuit Court of Appeals, so to speak, on its own initiative and no Oklahoma law or authority of any kind was cited in the opinion to support the same. Of course petitioner had no opportunity to plead to or defend as against this defense because it could not and did not know that the same would be considered by the Circuit Court.

The decision of the United States Circuit Court of Appeals for the Tenth Circuit was rendered on October 29, 1945, and within the time required under the rules of said Court petitioner filed a petition for rehearing; again calling the Court's attention to the Oklahoma law (R. 243-272).

The Court's attention was also called to the fact that the construction of the policy provision above referred to by the Circuit Court was in violation of the Oklahoma statutes prohibiting contracts contrary to the policy of express law (R. 268-271). On December 6, 1945, petition for rehearing was denied (R. 274). The duly certified

record, including all the proceedings in said cause in said United States District Court for the Western District of Oklahoma and the United States Circuit Court of Appeals for the Tenth Circuit is filed herewith under separate cover.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by Act of February 13, 1925, and that portion of Subsection (B) of paragraph five (5) of rule thirty-eight (38) of Revised Rules of the Supreme Court of the United States, made in pursuance thereof, viz:

> "Where a circuit court of appeals has decided an important question of local law in a way probably in conflict with applicable local decisions,"

And also that portion of Subsection (B) of paragraph five (5) of the same rule reading:

> "Or has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision."

This cause originated in the District Court of Pottawatomie County, Oklahoma, and was removed by respondent to the United States District Court for the Western District of Oklahoma upon the ground of diversity of citizenship and was reversed on appeal by the United States Circuit Court of Appeals for the Tenth Circuit.

The opinion of the Circuit Court of Appeals was filed on October 29, 1945; petition for rehearing was filed in

time allowed under rules of said Court and denied, and final decree was entered on December 6, 1945. Cases thought to sustain the jurisdiction are:

—*New York Ins. Co.* v. *Jackson*, 304 U. S. 260, 82 L. Ed. 1329;

Rosenthal v. *New York Life Ins. Co.*, 304 U. S. 263, 82 L. Ed. 1330;

Ruhlin v. *New York Life Ins. Co.*, 304 U. S. 313, 82 L. Ed. 1290;

Fidelity Union Trust Co. v. *Field*, 311 U. S. 169, 85 L. Ed. 109;

Letulle v. *Scofield*, 308 U. S. 415, 84 L. Ed. 355;

Hudson v. *Moonier*, 304 U. S. 397, 82 L. Ed. 1422.

QUESTIONS PRESENTED

The questions presented by petitioner's petition herein for writ of certiorari are:

(1) Did the Circuit Court of Appeals err in failing to apply the law of Oklahoma as the rule of decision in this case?

(2) Did the Circuit Court of Appeals erroneously treat the questions considered by it on appeal as matters of general law instead of following the applicable state law of Oklahoma?

(3) Is the holding of the Circuit Court of Appeals that payment by an insurance company of the proceeds of the policy to the assignee of an insane insured, entirely without

understanding, discharges the policy contract probably in conflict with applicable decisions of the State Courts of Oklahoma.

(4) Was the action of the Circuit Court of Appeals, in deciding that the provision of the policy providing that the Company assumed no responsibility for the validity of any assignment, relieved the Company from liability because of payments to assignees of any invalid assignments, when the question had not been presented or raised by the parties, such a departure from the accepted and usual course of jurisdictional proceedings as to call for an exercise of this Court's power of supervision.

(5) Was this last holding by the Circuit Court of Appeals contrary to and in conflict with the law of Oklahoma.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) The correct determination of this case involves important questions of local law and public policy. Statutes and decisions of Oklahoma on the subject reflect the expressed public policy adopted by the State of Oklahoma for the protection of its mentally incompetent citizens and the decision of the Circuit Court of Appeals in this case, if permitted to stand, creates an exception thereto not authorized by the Legislature or Courts of Oklahoma in favor of insurance companies upon insurance policies. Such an exception constitutes an encroachment in a field of public policy belonging exclusively to the people of Oklahoma.

It is the proper function of the federal courts to ascertain what the State law is and not what it ought to be. *Klaxon* v. *Stenton Mfg. Co.*, 313 U. S. 487, 85 L. Ed. 1477.

Furthermore, Oklahoma statutes provide that all contracts are unlawful which are contrary to the policy of express law (Title 15, O. S. A. 1941, Sec. 211) and which have for their object the exemption of one directly or indirectly from responsibility for his own negligence or violation of law (Title 15, O. S. A. 1941, Sec. 212). Under the decision of the Circuit Court of Appeals in this case insurance companies, by contracts with their policyholders, can relieve themselves from duties and liabilities imposed upon them by law regardless of the statutes of Oklahoma prohibiting such contracts. The rights of all policyholders who are Oklahoma residents are affected by such an interpretation.

(2) The Circuit Court of Appeals has wrongly refused to apply Oklahoma law as the rule of decision in the case and unless it is required to do so by this Court the doctrine of *Erie Railroad Co.* v. *Thompkins* (304 U. S. 64, 82 L. Ed., 1188) availeth nothing. The question of uniformity of decisions is an important one and the accident or circumstance of diversity of citizenship should not be permitted to disturb the equal administration of justice in co-ordinate state and federal courts sitting side by side. If a Circuit Court can, by ignoring the state statutes and decisions of state courts, avoid the necessity of complying with the rule of decision statute it is possible through this procedure to achieve the undesired result of dual systems of juris-

prudence within the territorial boundaries of a state, notwithstanding the repeated pronouncements of this Court. Questions concerning the relations of federal and state courts are considered of public importance. *Guaranty Tr. Co. v. York*, decided June 18, 1945, not yet officially reported, L. Ed. 89, page 1418.

(3) The decision of the Circuit Court of Appeals, if permitted to stand, will furnish a precedent for courts everywhere to hold that state laws governing the validity of contracts or assignments and making certain of them void upon the grounds of insanity, fraud in the inception, lack of contractual capacity, duress, lack of insurable interest, and reasons affecting the public policy of a state do not govern and control the rights and liabilities of insurance companies and their policyholders and that payment by an insurance company to an assignee of a policy discharges the policy contract regardless of the infirmities existing in the assignment and the state laws relating thereto, so long as the insurance company makes such payment without actual notice of the void character of the assignment. If the decision of the Circuit Court of Appeals is followed by courts of other jurisdictions a whole new body of law will thus be created concerning insurance policies, putting them in the class of negotiable instruments and above and beyond the scope of general state laws relating to the capacity of parties to contract and the validity of contracts. If the decision in this case is to initiate such a body of law it is very important that the decision be determined correctly, which we respectfully submit is not the case herein.

SPECIFICATIONS OF ERRORS

Petitioner says that the United States Circuit Court of Appeals for the Tenth Circuit has erred:

(1) In treating the questions decided by it in this case as matters of general law and in failing to apply the law of Oklahoma as the rule of decision herein.

(2) In holding that payment of the policy proceeds to Fields by the Company discharged the policy contract.

(3) In holding that the Company was relieved from liability in this case because of the policy provision reciting that the Company assumes no responsibility for the validity of any assignment.

(4) In rendering a decision contrary to the law of Oklahoma as declared by its statutes and the decisions of its Supreme Court.

(5) In deciding a question not raised by the parties or presented by the briefs.

PRAYER

Wherefore, petitioner prays that a writ of certiorari be issued by this Court directed to the United States Circuit Court of Appeals for the Tenth Circuit to the end that the said opinion and decree of said United States Circuit Court of Appeals for the Tenth Circuit in said cause of New York Life Insurance Company, a corporation, Appellant, v. The Federal National Bank, of Shawnee, Oklahoma, a corpo-

ration, Guardian of the Estate of Minnie O. Cammack, an incompetent person, Appellee, No. 3147 be reviewed by this Court as provided by law, and that upon such review said decree be reversed, and that petitioners have such other relief as to this Court may seem appropriate.

MARK GOODE,
Counsel for Petitioner.

JOHN L. GOODE,
Of Counsel.